REMARKS

In the Office Action dated January 30, 2006, the Examiner imposed a restriction requirement between claims 1, 2, 18-27, and 48-60 drawn to a heating apparatus comprising a one piece low porosity thermally conductive mass; claims 7-14 drawn to a heating apparatus comprising a multi-piece low porosity thermally conductive mass; and claims 28-40 drawn to a method of making a heating apparatus. Applicant respectfully elects claims 1, 2, 18-27 and 48-60 with traverse.

Applicant traverses the restriction requirement and requests that all claims 1-2, 7-14, 18-40, and 48-60 remain in the application for examination. The Examiner asserts that the inventions are distinct since the heating apparatus can be made by a materially different process, such as by attaching or thermally coupling the heating means to the outside of the thermally conductive mass instead of mounting the heater means in the thermally conductive mass or the method can be used to make a materially different apparatus, such as a heating apparatus consisting of a multi-piece thermal mass. It is submitted that the heating apparatus cannot be made by a materially different process and that the heating means must be inside the thermally conductive mass. As recited in the claims, the heating means is disposed within the thermally conductive mass (see claims 1 and 27) or the heater means is mounted in the thermally conductive mass (see claims 8 and 9), both of which require that the heater means be in the thermally conductive mass rather than outside. The method of manufacturing a fluid heater recited in claim 28 includes the step of mounting the heater means in the thermally conductive mass. Therefore, the apparatus claims recited in 1-2, 7-14, and 18-27 cannot be made by a materially different process that includes mounting the heating means outside the thermally conductive mass.

The Examiner contends that a one piece thermally conductive mass is materially different than a multi-piece thermally conductive mass. It is submitted that a one piece thermally conductive mass is not materially different than a multi-piece thermally conductive mass. The method recited in claim 28 includes the step of providing a thermally conductive mass with a low porosity. The thermally conductive mass can be of a one piece, monolithic body as disclosed in claims 1 and 27 or can be a multi-piece body formed of an extruded material as recited in claims 8 and 9. Although the thermally conductive mass can be a multi-piece body, each piece is formed of the same material, essentially forming a single, monolithic, low porosity body. A low porosity, one piece body is not materially different from a low

porosity, multi-piece body where the multiple pieces are of a single material. Therefore, the method recited in claims 28-40 cannot be used to make a materially different apparatus.

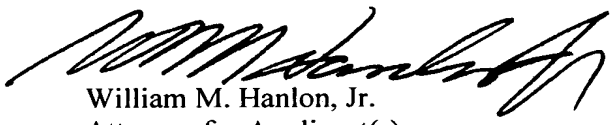
Additionally, in the previous response dated November 8, 2005, new product by process claims, numbers 48-60, were added as linking claims between the product claims 1-2, 7-14, and 18-27 and the process claims 28-40. Pursuant to MPEP §806.05(f) it is properly grouped with the product claims 1-2, 7-14, and 18-27. Pursuant to MPEP §809.03, a claim to the necessary process of making a product links proper process and product claims together, where the inventions otherwise may be divisible. Claims 1-2, 7-14, and 18-27 are product claims directed at a heater apparatus for heating fluid. Claims 28-40 are process claims directed at a method for manufacturing a fluid heater. The linking claims 48-60 are directed at a heater apparatus, as recited in the product claims 1-2, 7-14, and 18-27 that is manufactured by a process including the steps recited in claims 28-40, thereby properly linking the product and the process claims together. Pursuant to MPEP §814, the linking claim should not be associated with any one of the linked inventions that may be elected. Pursuant to MPEP §809.04, if a linking claim is allowed, the Examiner must thereafter examine the claims to the non-elected invention that are linked to the elected invention by the allowed linking claim. Withdrawal of the restriction requirement is, therefore, respectfully requested. Rejoinder of claims 28-40 is also respectfully requested.

It is respectfully submitted that this Amendment traverses and overcomes all of the Examiner's objections and rejections to the application as originally filed. It is further submitted that this Amendment has antecedent basis in the application as originally filed, including the specification, claims and drawings, and that this Amendment does not add any new subject matter to the application. Reconsideration of the application as amended is requested. It is respectfully submitted that this Amendment places the application in suitable condition for allowance; notice of which is respectfully requested.

If the Examiner feels that prosecution of the present application can be expedited by way of Examiner's amendment, the Examiner is invited to contact the Applicants' attorney at the telephone listed below.

Respectfully submitted,

YOUNG, BASILE, HANLON, MacFARLANE,
WOOD & HELMHOLDT, P.C.



William M. Hanlon, Jr.
Attorney for Applicant(s)
Registration No. 28422
(248) 649-3333

3001 West Big Beaver Rd., Suite 624
Troy, Michigan 48084-3107

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WMH/TMS/jml